

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Nancy Leppink, in her official capacity as  
Commissioner of the Minnesota Department of  
Labor & Industry,

Court File No. \_\_\_\_\_

Jan Malcolm, in her official capacity as  
Commissioner of the Minnesota Department of  
Health,

**COMPLAINT FOR INJUNCTION**

Plaintiffs,

vs.

Water Gremlin Company,

Defendant.

Plaintiff Nancy Leppink, in her official capacity as Commissioner of the Minnesota Department of Labor and Industry, and Plaintiff Jan Malcolm, in her official capacity as Commissioner of the Minnesota Department of Health (“MDH”), for their Complaint against Defendant Water Gremlin Company (“Water Gremlin”), hereby state and allege as follows:

**INTRODUCTION**

This is a complaint for injunctive relief pursuant to Minn. Stats. §§ 182.662, 145.075 to enjoin Defendant from engaging in industrial operations that are poisoning children with toxic lead in Minnesota unless and until appropriate remedial measures are taken. Despite the efforts of the State of Minnesota and Ramsey County to abate the egress of lead contamination from the Defendants’ facility, children of Defendant’s employees are continuing to be exposed to unsafe and even permanently-damaging levels of lead contamination.

## **JURISDICTION AND VENUE**

1. This Complaint is issued pursuant to Minn. Stat. § 182.662, which gives authority to Plaintiff Leppink, as commissioner of the Minnesota Department of Labor & Industry, to petition the district court “to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter.” Minn. Stat. § 186.662.

2. This Complaint is also issued pursuant to Minn. Stat. § 145.075, which gives authority to Plaintiff Malcolm, as commissioner of the Minnesota Department of Health, to bring an action in district court to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.

3. Venue is proper in this district court because Minn. Stat. § 182.662, subd. 2 provides that Plaintiff Lippink may bring this action in district court. Venue is also proper in this district court because Minn. Stat. § 145.075 grants Plaintiff Malcolm the authority to bring an action in a court of appropriate jurisdiction. Moreover, Water Gremlin, the defendant, is located in Ramsey County. The activity to be enjoined takes place at the Defendant’s industrial operations plant in White Bear Township, Minnesota, which is located in Ramsey County. In addition, many of the workers and children that are suffering from lead exposure reside in Ramsey County.

## **PARTIES**

4. Plaintiff Leppink is the Commissioner of the Department of Labor and Industry, which oversees implementation of the Minnesota Occupational Safety and Health Act, among other safety-related functions of the department. Minn. Stat. § 182.65. The Commissioner is vested with authority to order an employer to cease an operation that presents a “substantial

probability that the condition or practice could result in death or serious physical harm,” for up to three days (Minn. Stat. § 182.662, subd. 1); and bring an action to ask a court to restrain any conditions or practices that could reasonably be expected to cause death or serious physical harm. Minn. Stat. § 182.662, subd. 2.

5. Plaintiff Malcolm is the Commissioner of MDH, which has general authority as the state’s official health agency responsible for the development and maintenance of an organized system of programs and services for protecting, maintaining, and improving the health of the citizens. Minn. Stat. § 144.05, subd. 1. MDH is vested with authority—via its Commissioner—to enjoin public health nuisances. Minn. Stat. § 145.075.

6. Defendant Water Gremlin is an industrial manufacturer of lead fishing sinkers and lead battery terminals located at 4400 Otter Lake Rd., White Bear Township, MN 55110.

### **FACTUAL BACKGROUND**

7. Water Gremlin was founded in 1949, in White Bear Lake, Minnesota, as a manufacturer of fishing lures and lead sinkers. Its lead manufacturing scope broadened in the 1970s to include the manufacture of lead terminals for lead-acid batteries (such as those used in the automotive and marine industries). Today, Water Gremlin claims to be the leading supplier of lead battery terminals to the North and South American battery markets, as well as other markets throughout the world. Water Gremlin offers cold-form, die-cast, advanced die-cast, gravity cast, and extrusion processing of lead.

#### **A. Lead poisoning is a serious problem.**

8. Lead is a known neurotoxin, and it is especially dangerous for young children. Even low level lead exposure adversely affects the neurobehavioral development of children. Low-level lead exposure during early development is strongly linked to deficits in

neurobehavioral-cognitive performance evident late in childhood through adolescence, learning disabilities and problems with cognition and attention.

9. Minnesota's definition of "elevated" blood lead level is 5 mcg/dL.<sup>1</sup> The State of Minnesota and Ramsey County apply Minn. Stat. § 144.9501's definition of "elevated" blood lead levels in children under six years old. Minn. Stat. § 144.9501, subd. 9, subd. 25. While the statute was originally drafted to be 10 mcg/dL, that standard was updated in 2014 to the lower threshold. Commissioner Order dated April 16, 2014. 38 SR 1507-1508, May 12, 2014.

10. A blood lead level of 15 mcg/dL in a child is even more significant. *E.g.*, Minn. Stat § 144.9502, subd. (3).

11. Removing a child with a blood lead level from the source of the lead is critical to prevent adverse health effects. If a child continues to be exposed, lead can accumulate to higher levels in the body and the child is subject to unpredictable, ongoing developmental injury.

**B. MDH's lead surveillance system provides specific triggering thresholds for follow-up environmental review.**

12. MDH receives data on all lead screening tests conducted in the state. By statute, all blood lead test results conducted on any person living in Minnesota must be reported by the testing laboratory to MDH. There are a variety of people who are commonly tested for blood lead levels, including: (1) employees in certain industries where testing is required; (2) young children screened as part of routine well-child medical visits at ages 1 and 2; (3) newly arrived refugees; (4) pregnant women with certain risk factors; and (5) people who are experiencing symptoms associated with lead exposure. The surveillance system's data may be incomplete.

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<sup>1</sup> The notations mcg/dL or ug/dL both represent micrograms per deciliter. And mcg/sqft, used later in this Complaint, represents micrograms per square foot.

MDH only has the data that it receives. MDH cannot confirm whether Water Gremlin employee testing or the attendant reporting to MDH captures everyone that it should.

13. MDH reports all test results of 5 mcg/dL to relevant public health agencies for appropriate follow up, including education, testing, and potentially assessment as the local agency may determine. At blood lead levels of 15 mcg/dL the environmental assessment becomes mandatory. At a blood lead level of 15 mcg/dL, Minnesota Statutes require an environmental risk assessment to be performed within 10 working days of the report. Minn. Stat. §144.9504, subd. 2. Some local public health agencies, such as Ramsey County, perform environmental assessments on all results over 5 mcg/dL.<sup>2</sup>

14. There is a separate obligation on MDH to report exceedances of 25 mcg/dL from adults whose most likely source of lead exposure is occupational to the Minnesota Occupation Safety and Health Administration. The purpose of these reports is to assist MnOSHA in identifying potential occupational sources of lead exposure.

**C. Water Gremlin employees are exposed to lead and have high blood lead level concentrations.**

15. Workers at Water Gremlin's facility are exposed to lead, lead shavings, lead dust, and other materials (such as degreasers and used personal protective equipment) that are contaminated with lead.

16. Certain Water Gremlin employees involved in lead manufacturing operations are required to have their blood tested for lead on a periodic basis. Because all results from these

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<sup>2</sup> At the time of an assessment (or after an order), a swab team worker or public health professional will visit with the affected family. Minn. Stat. § 144.9504, subd. 3. The worker will also meet with the property owner and tenant to review health-related information, including safety measures. *Id.* And the assessing agency is to ensure that the residents are appropriately relocated and assist residents in identifying resources that can provide assistance. *Id.* at subd. 3.

tests must be reported to MDH, MDH has regular testing data for Water Gremlin employees. The reporting systems do not require the reporting laboratory to report the identity of the employer. However, some laboratories will do so, and even in the absence of such information, MDH is often able to pair occupational tests with specific employers either because the tests are performed in batches, or for other reasons.

17. Based on that information, MDH lead testing data shows that a significant percentage of Water Gremlin employees have blood lead levels above 25 mcg/dL, the level triggering reports to MnOSHA.

18. In 2017, Water Gremlin employees represented 21 percent of all Minnesota adults—of which MDH is aware—who had a blood lead test result of at least 5mcg/dL.

19. In 2017, 4.2 percent of Water Gremlin employees known to MDH had a blood lead level in excess of 25 mcg/dL, with at least one employee testing as high as 37.3 mcg/dL.

20. In 2018, 6.7 percent of Water Gremlin employees known to MDH had a blood lead level in excess of 25 mcg/dL, with at least one employee testing as high as 45.6 mcg/dL.

21. In 2019, 4.5 percent of Water Gremlin employees known to MDH had a blood lead level in excess of 25 mcg/dL, with at least one employee testing as high as 39.0 mcg/dL

**D. Children of Water Gremlin employees have unacceptable blood lead levels; efforts to prevent lead exposure to children have failed.**

22. In late 2018 and throughout 2019, the Minnesota Department of Labor & Industry, the Minnesota Department of Health, and Ramsey County, detected pattern of elevated blood lead levels in children with a parent who worked at Water Gremlin.

23. MDH's surveillance system has received reports of unacceptable blood lead levels in at least a dozen children that have at least one parent who works (or worked) at Water

Gremlin. Two of these children had a blood lead concentration at or above 15 mcg/dL, which is considered high exposure.

24. In late 2017 and early 2018, St. Paul-Ramsey County Public Health's "Lead and Healthy Homes" program received reports from MDH's surveillance system of numerous children with blood lead levels in the elevated range (6-13.9 mcg/dL). These results presented a cohort of cases related to parents that worked at Water Gremlin.

25. The program engaged in a variety of efforts to address the elevated levels in children, including providing direct education and health support to the affected families.

26. Ramsey County's efforts also included investigating the source of lead in the affected children.

27. The children all had a parent who worked at Water Gremlin.

28. Ramsey County was able to rule out other sources of lead, such as the dwellings of the affected families, as sources of lead exposure to the children.

29. Investigators found incredibly high concentrations of lead in the Water Gremlin employees' cars, and elevated levels in certain areas of their homes, such as entryway floors and closets.

30. In one example, investigators tested a driver-side floor mat it tested positive for lead dust at a level of 9,400 mcg/sqft. For comparison, the standards for lead dust in the home are 40 mcg/sqft on floors and 250 mcg/sqft for window sills.

31. Based on this information, investigators concluded that "take home" lead dust from the Water Gremlin plant was the source of lead resulting in the elevated blood lead level of the employee's children.

32. While the Lead and Healthy Homes program primarily addresses residential contamination, Ramsey County contacted Water Gremlin to help it develop better industrial practices. These efforts included recommendations to provide better employee education, produce and distribute language-appropriate educational materials (such as in Hmong and Karen languages), ensure improved employee hygiene, and identify the areas of the plant most likely to be causing the exposure to children.

33. Ramsey County also performed lead swipe tests on various surfaces (i.e., sinks, locker room floor) at Water Gremlin's plant and shared the results with Water Gremlin.

34. The locker room floor—where employees would wear their street shoes before leaving for home—tested at 9,000 mcg/sqft.

35. Ramsey County also observed a number of practices that were not lead-safe, and reported them to Water Gremlin. These included poor hand hygiene, comingling of contaminated personal protective equipment with areas that should remain clean (i.e., lunchroom surfaces, lockers, and conference room chairs), and employees walking through contaminated areas of the plant in street shoes.

36. On January 22, 2019, MDH forwarded Ramsey County a report of a child with a blood lead level of 16.6 mcg/dL. This triggered the 15 mcg/dL level for a mandatory elevated blood lead level investigation.

37. The child has a parent who works/worked at Water Gremlin. In the employee's car, the driver's side floor tested positive for the presence of lead at 7000 mcg/sqft, and a carpeted area near the entry way of the home tested at 50 mcg/sqft. The child's home did not otherwise have any source for lead contamination.



38. At this time, given the seriousness of a case exceeding the 15 mcg/dL threshold, Ramsey County escalated its efforts. It issued an order requiring Water Gremlin to immediately complete the recommendations that had already been made, to hire a consulting industrial hygienist, and to implement any recommendations from the hygienist.

39. Water Gremlin reported that it was continuing to work on improving its practices throughout 2019.

40. Another child at 6.0 mcg/dL was reported to MDH in late March 2019.

41. On October 14, 2019, another child was reported to have a blood lead level exceeding the 15 mcg/dL trigger.

42. The child has a parent who works at Water Gremlin.

43. Ramsey County investigators again ruled out other sources of lead contamination in the residence. The family's apartment's front entry floor area tested high for lead dust (60 mcg/sqft). In the family's car, the driver's side seat and drivers side floor tested extremely high at 130 mcg and 6700 mcg, respectively.

44. Ramsey County escalated the case to MDH on October 17, 2019.

45. Ramsey County informed Water Gremlin that it had done so on October 26, 2019.

**E. A follow-up investigation by the Department of Labor and Industry resulted in a temporary shut-down order on today's date.**

46. The Department of Labor and Industry inspected Water Gremlin's operations on October 15, 22, and 26 of 2019.

47. The Department of Labor and Industry inspectors observed numerous unsafe acts that could result in serious physical harm by lead contamination migrating out of the facility.

These acts included:

- employees using the same locker for personal and lead-contaminated articles;
- employees wearing personal socks in lead-contaminated areas;
- employees placing lead-contaminated protective clothing into storage bins and then rehandling the articles;
- visible lead splatter adhered to protective clothing even after the protective clothing had been laundered;
- employees improperly wearing protective clothing;
- employees improperly failing to wash their faces;
- employees using brooms for dry sweeping;
- employees carrying personal cellphones in the production area;
- lack of HEPA vacuuming or tacky mats at the entrances of lunchrooms or change rooms;
- ineffective training; training not in the employees language, and missed safety trainings;
- employees who stated that they had worn contaminated protective clothing from work to their homes in the past;
- a plant manager also stated that employees had worn contaminated protective clothing from work to their homes in the past (he said, “but what can you do?”); and
- failure by management to take any action to correct the unsafe practices regarding employees’ use and handling of personal protective equipment.

48. Based on the findings of the inspector, the Department of Labor and Industry issued a shut-down order, which was duly served on October 28, 2019 (the morning of this Complaint). A copy of that order is attached as Exhibit 1 to this Complaint.

**F. It is time for the Court to step in.**

49. It is particularly troubling that the very same issues and practices that Ramsey County had identified as problematic continue to occur to this day. Compare Paragraphs 32-35 with Paragraph 47.

50. It is shocking that Water Gremlin has been aware that lead is present at elevated levels of its employees' children, and has not successfully prevented their exposure. Exposing children to lead poisoning is the definition of serious physical harm that should be enjoined.

51. To the extent Water Gremlin employees sell their cars, or vacate homes or apartments contaminated with take home lead, the subsequent purchasers/or residents may face a lead contamination risk completely unknown to them. This is, by its very nature, a threat to public health that should be enjoined.

**COUNT I**

**(DANGER OF SERIOUS PHYSICAL HARM)  
INJUNCTIVE RELIEF (MINN. STAT. § 182.662)**

52. Plaintiff realleges paragraphs 1-51 above and incorporates those allegations by reference.

53. Water Gremlin has not, cannot, or will not take steps necessary to adequately prevent lead contamination from migrating out of the facility and into its employees' cars and homes, where it is continuing to poison children.

54. Water Gremlin's acts and omissions constitute conditions or practices "which are such that a danger exists which could reasonably be expected to cause death or serious physical harm." Minn. Stat. § 186.662.

55. An injunction should issue, pursuant to Minn. Stat. § 186.662, prohibiting Water Gremlin's practices unless and until such harm can be prevented.

**COUNT II**  
**(PUBLIC HEALTH NUISANCE)**  
**INJUNCTIVE RELIEF (MINN. STAT. § 145.075)**

56. Plaintiff realleges paragraphs 1-51 above and incorporates those allegations by reference.

57. Water Gremlin has not, cannot, or will not take steps necessary to adequately prevent lead contamination from migrating out of the facility and into its employees' cars and homes, where it is continuing to poison children.

58. Water Gremlin's acts and omissions constitute a public health nuisance that "adversely affects the public health." Minn. Stat. § 145.075.

59. An injunction should issue, pursuant to Minn. Stat. § 145.075, prohibiting Water Gremlin's practices unless and until such a public health nuisance can be prevented.

**PRAYER FOR RELIEF**

WHEREFORE, Pursuant to Minn. Stat. §§ 182.662 and 145.075, Plaintiffs seek an order enjoining Defendant as follows:

1. Immediately enjoining Defendant from all lead processing and handling operations unless and until Defendant adopts and implements preventative measures that will, to the Court's satisfaction, eliminate the risk of injury and public health threat posed by its current practices;

2. To facilitate notice to affected individuals and for the Commissioner of Labor to comply with Minn. Stat. § 186.662, subd. 5, ordering Defendant to cooperate with the efforts of

both Plaintiffs to identify any and all employees, contractors, visitors, or others, who may have been exposed to lead contamination on-site or off-site;

3. Ordering the Defendant to engage in contamination clean-up, including investigation, identification, and cleaning, for all residences and vehicles that may have had “take-home” lead deposited in them; and providing for testing the blood lead level of those who may have been exposed to such deposits; and

4. Granting such other and further relief as the Court deems just and proper, including reimbursement of oversight expenses, attorney fees, and costs.

Dated: October 28, 2019

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Peter N. Surdo

PETER N. SURDO  
Special Assistant Attorney General  
Atty. Reg. No. 0339015  
(651) 757-1061 (Voice)  
(651) 297-4139 (Fax)  
peter.surdo@ag.state.mn.us

OLIVER LARSON  
Assistant Attorney General  
Atty. Reg. No. 0392946  
(651) 757-1265 (Voice)  
(651) 297-4139 (Fax)  
oliver.larson@ag.state.mn.us

COLIN O'DONOVAN  
Assistant Attorney General  
Atty. Reg. No. 0396349  
(651) 757- (Voice)  
(651) 297-4139 (Fax)  
colin.odonovan@ag.state.mn.us

445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127

ATTORNEYS FOR THE COMMISSIONERS

**MINN. STAT. § 549.211 ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2018).

Dated: October 28, 2019

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Peter N. Surdo

PETER N. SURDO  
Special Assistant Attorney General  
Atty. Reg. No. 0339015  
(651) 757-1061 (Voice)  
(651) 297-4139 (Fax)  
peter.surdo@ag.state.mn.us

OLIVER LARSON  
Assistant Attorney General  
Atty. Reg. No. 0392946  
(651) 757-1265 (Voice)  
(651) 297-4139 (Fax)  
oliver.larson@ag.state.mn.us

COLIN O'DONOVAN  
Assistant Attorney General  
Atty. Reg. No. 0396349  
(651) 757- (Voice)  
(651) 297-4139 (Fax)  
colin.o'donovan@ag.state.mn.us

445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127

ATTORNEYS FOR THE COMMISSIONERS

# **EXHIBIT 1**





# NOTICE

## of Conditions and Practices Presenting Substantial Probability of Serious Physical Harm and

# ORDER

## to Cease Employment of Employees until Conditions and Practices Presenting Substantial Probability of Serious Physical Harm are Remediated

An investigation of this place of employment, located at:

Water Gremlin Company, 4400 Otter Lake Road, White Bear Lake, MN 55110

has been conducted by the Occupational Safety and Health Division of the Minnesota Department of Labor and Industry. On the basis of this investigation, investigators have found that conditions and practices at this workplace present a SUBSTANTIAL PROBABILITY OF SERIOUS PHYSICAL HARM.

In accordance with the provisions of MN Statutes §182.662, subd. 1, the employer, **Water Gremlin Company**, and its employees are hereby notified of the Minnesota Department of Labor and Industry's investigation findings, and the employer, **Water Gremlin Company**, is hereby ordered to cease the employment of employees in the industrial operations at this place of employment related to the manufacture of lead fishing lures and lead sinkers and the manufacture of lead terminals for lead-acid batteries until the conditions and practices that present a substantial probability of serious physical harm are remediated.

**This Order is effective for three days (72 hours) after the date and time of its issuance to the employer, Water Gremlin Company, at its place of employment located at 4400 Otter Lake Road, White Bear Lake, MN 55110.**

This Notice and Order does not constitute a Citation and Notification of Penalty. Citations will be issued to the employer separately.

Description of conditions and practices that present a substantial probability of serious physical harm and remediation required:

Employer has failed to take steps to effectively control employee exposure to lead and the lead contamination of employees' bodies, clothing, shoes and personal items while at work resulting in the substantial probability of serious physical harm to employees and their family members from lead contamination of employee's homes, cars and personal items.

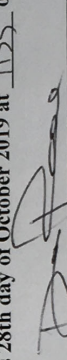
- Effective workplace controls were either not available or not effectively implemented, including showers and showering, hand and face washing facilities and hand and face washing, and locker rooms and use of locker rooms that allow for employees' clean entry to and clean exit from the place of employment;
- Appropriate Personal Protective Equipment (PPE) and hygiene facilities were not provided or properly used;
- Proper and effective storage, care, maintenance, cleaning and disposal of PPE was not practiced;
- Proper and effective housekeeping practices in the plant were not utilized; and
- Necessary information, training, and supervision was not provided to ensure compliance with workplace safety and health policies and rules.

The following remediation is necessary to effectively control employee exposure to lead and lead contamination of employees' bodies, clothes, shoes and personal items while at work to prevent the lead contamination of employee's homes, vehicles and personal items.

- Construct or otherwise provide showers, sinks, and locker rooms that allow for employees' clean entry into clean exit from the plant;
- Ensure the provision and use of appropriate PPE and hygiene facilities;
- Ensure the proper storage, care, maintenance, cleaning and disposal of PPE;
- Utilize proper and effective housekeeping practices in the plant;
- Provide necessary information, training, and supervision in a manner understandable by all employees to ensure compliance with workplace safety and health policies and rules;

*This Notice and Order must remain posted at the place of employment until removed by the representative of the Commissioner of the Minnesota Department of Labor and Industry.*

Signed and dated at Water Gremlin Company, 4400 Otter Lake Road, White Bear Lake, MN 55110, this 28th day of October 2019 at 11:35 o'clock AM.

  
Occupational Safety and Health Investigator  
Occupational Safety and Health Division  
Minnesota Department of Labor and Industry